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# Answers

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- 1** The Supreme Court is the highest court in the Republic. It is composed of 13 judges, of whom one is the President. The Supreme Court has the following jurisdictions.

The Supreme Court is the final Appellate Court in the Republic and has jurisdiction to hear and determine all appeals from lower courts in civil and criminal matters. Appeals are heard by a panel of three judges. The hearing of the appeal is based on the record of the proceedings kept in the lower court and no evidence is heard except in exceptional and very rare circumstances. In the exercise of its appellate jurisdiction the Supreme Court may uphold, vary or set aside the decision appealed from, or it may order a re-trial.

The Supreme Court is also vested exclusively with revisional jurisdiction in connection with administrative or executive decisions, acts or omissions. A decision, act or omission may be annulled on the ground that it is in excess or abuse of any power vested in the administrative organ, or contrary to the provisions of the Constitution.

In addition, the Supreme Court has exclusive jurisdiction to issue the prerogative writs of *Habeas Corpus*, *Mandamus*, *Certiorari*, *Quo Warranto* and *Prohibition*.

The Supreme Court has original and appellate jurisdiction in admiralty cases. At first instance the case is heard by a single judge of the Supreme Court and on appeal the case is heard by the full bench.

Moreover, the Supreme Court, as an electoral court, has exclusive jurisdiction to hear and determine petitions concerning the interpretation and application of the electoral laws.

Finally, the Supreme Court has jurisdiction to examine the constitutionality of any law or any conflict of power or competence, which arises between any organs or authorities of the Republic, and to hear and determine any recourse by the President of the Republic regarding the compatibility with the constitution of any law enacted by the House of Representatives.

- 2 (a)** According to the Contract Law, Cap. 149, consideration is an act or abstinence or promise which the promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing at the desire of the promisor.

The commonest form of consideration is the payment of or the promise to pay money in exchange for the supply of goods. However, consideration may be non-monetary. For example chocolate wrappers were held to form part of the consideration in *Chappell v Nestle* (1960).

- (b)** The importance of consideration lies in the distinction between gratuitous and legally binding promises, so as to decide which types of promise the law of contract should recognise and enforce. All the law is looking for is bargain. Therefore, even nominal consideration will be sufficient. In other words, although consideration needs to have some value, it does not matter how small that value is.

Consideration is a fundamental ingredient in a contract, so that an agreement without consideration will generally be unenforceable. Therefore, a gift or an act committed without consideration will not create contractual obligations under Cyprus law, subject to some exceptions, such as a written agreement between close relatives, which is signed by the promisor. However, it is important to note that according to the Contract Law, lack of consideration will not affect the validity of transactions which have already been executed or gifts which have already been made.

- 3** The duration of a partnership depends on the express or implied agreement between the partners. A partnership is liable to be dissolved pursuant to the provisions of the partnership agreement.

According to the Partnership Law, Cap. 116, a partnership is dissolved, subject to any agreement between the partners:

- (i) if entered into for a fixed term, by the expiration of that term; or
- (ii) if entered into for a single adventure or undertaking, by the termination of that adventure or undertaking; or
- (iii) if entered into for an indefinite time, by any partner giving notice to the other or others of his intention to dissolve the partnership; or
- (iv) by the death or bankruptcy of any partner.

In addition, a partnership is in every case dissolved whenever an event happens that makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

A partnership may also be dissolved by the court on the application of any partner. The court has, *inter alia*, jurisdiction to dissolve a partnership in the following circumstances:

- (i) when a partner is shown to the satisfaction of the Court to be of permanently unsound mind;
- (ii) when a partner becomes permanently incapable of carrying out his part of the partnership contract;
- (iii) when a partner is guilty of such conduct as in the opinion of the Court is calculated to prejudicially affect the carrying on of the business;

- (iv) when a partner wilfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in the partnership with him;
- (v) when the business of the partnership can only be carried on at a loss;
- (vi) when the court considers it just and equitable to dissolve the partnership.

- 4 (a)** As established by *Salomon v Salomon* (1987), a company, once registered, becomes a distinct legal entity and is accorded a legal personality distinct from that of its members. Hence upon incorporation, a company is capable of enjoying rights and of being subject to duties which are not the same as those enjoyed or borne by its members. In other words, it has 'legal personality' and is often described as an artificial person in contrast with a natural person (i.e. a human being).

The effect of accordance of separate legal personality to a company is that the acts of a company are acts of the company itself and are distinguished from the acts of its members or directors. Thus the responsibility for the acts of a company is borne by the company itself. The members or directors of the company bear no responsibility towards third parties who have contracted or otherwise dealt with the company. In the case of a company limited by shares each member will be liable to contribute when called upon to do so the full nominal value of the shares held by him in so far as this has not already been paid by him or any prior holder of those shares. In effect, therefore, the member, without being directly liable to the company's creditors, is a limited guarantor of the company.

In addition, corporate personality enables a company to own property which is clearly distinguishable from that of its members and also to sue and be sued in its own name.

- (b)** The rule relating to separate personality may be ignored in exceptional circumstances, where the courts will lift the 'veil of incorporation' and impose personal liability on the members or directors.

The Companies Law recognises a number of circumstances when the rule relating to separate personality may be ignored.

For example, according to s.32 of the Companies Law, if the number of members of a public company is reduced below seven and the company carries on business for more than six months while the number is so reduced, then every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than seven members is severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

In addition, according to s.194 of the Companies Law, the liability of the directors of a company may be unlimited if so provided by the memorandum. A company may also alter its memorandum, if so permitted by its articles, so as to render unlimited the liability of its directors.

According to s.104 of the Companies Law, where a public company trades or exercises borrowing powers before it has been issued with a trading certificate, the directors are subject to a daily fine of up to CYP250 (equivalent to approximately EUR427).

Finally, where the directors are found liable for fraudulent or wrongful trading, the courts will readily lift the veil under statute.

The courts may also lift the veil of incorporation at common law but this will be done in the most exceptional circumstances. For example, where a company is a mere sham designed to allow a person to evade their contractual obligations (e.g. *Gilford Motor Co Ltd v Horne* (1933)) or in times of war when it is illegal to trade with the enemy.

- 5** The doctrine of *ultra vires* provides that if a company acts beyond the scope of the objects stated in its memorandum of association, such acts are void as beyond the company's capacity even if ratified by all the members.

Before the year 2000, the doctrine of *ultra vires* was applied strictly in Cyprus. However, in the year 2000 s.33A was incorporated in the Companies Law, under which a company is bound by acts or transactions entered into by its officials even if such acts or transactions are beyond the scope of the objects stated in the company's memorandum of association.

However, the company will not be bound by acts or transactions which are beyond the scope of its objects if such officials have acted beyond the powers conferred or permitted to be conferred to them by the law.

In addition, if a company proves that the third person knew, or could not have ignored, that the acts or transactions fell outside the objects of the company then the company is not bound by such acts or transactions.

Section 33A clarifies that the publication of the company's memorandum and articles of association does not by itself constitute sufficient proof of knowledge on the part of a third person.

- 6 (a)** A company may raise its loan capital in several ways, such as by issuing debentures (whether secured or unsecured) or loans, bills of exchange and other commercial short-term loans, or obtaining an overdraft or loan from the bank. A trading company has an implied power to borrow for purposes incidental to its business. In practice, the memorandum is likely to include in the objects clause an express power to borrow. However, a non-trading company can only borrow if it has an express power to do so. If the power to borrow is implied it is limited to borrowing for purposes incidental to the company's business. If the power to borrow is express then borrowing for a purpose other than to fulfil an object will be *intra vires* the company but may constitute an abuse of the powers of the directors.

- (b) According to s.182 of the Companies Law, a company is generally prohibited from making a loan to its director. However, there are a number of exceptions to the general prohibition so that a company may make a loan to its director in the following circumstances:
- (i) where the director is its holding company; or
  - (ii) in order to meet expenditure incurred or to be incurred by the director for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or
  - (iii) when the lending of money is included in the ordinary business of the company.

7 (a) Corporate governance is a system of structuring, operating and controlling a company with a view to achieve long term strategic goals to satisfy shareholders, creditors, employees, customers and suppliers. Corporate governance aims to protect investors, enhance the supervisory role of the Board of Directors and ensure its independence and to ensure transparency. In other words, corporate governance is a set of processes, customs, policies, laws and institutions which affect the way a company is directed and administered.

(b) The Cyprus Corporate Governance Code was issued in Cyprus in September 2000 and the second edition was issued in March 2006.

The application of the Code has not yet been rendered totally compulsory, although public companies listed in the Cyprus Stock Exchange are obligated to include in their annual report, a directors' report in relation to corporate governance. In particular, the company has to explicitly state whether it incorporates the Code and to which extent. The company must also confirm that it has complied with the provisions of the Code, and otherwise it has to explain why not.

The Code proposes the creation of three committees for the appointment, remuneration and control of the Board of Directors. For example, the Code provides for the empowerment of the role of non-executive directors, the achievement of balance between executive and non-executive directors, and the board's independence. In addition, the Code states that there has to be transparency with regard to the directors' remuneration and the relevant criteria must be published in the company's report. Finally, the company's directors must, at least once a year, supervise and evaluate the efficiency of the internal controls of the company.

8 The disclaimer for all damage of any kind clearly constitutes an exclusion clause, i.e. a term in the contract that seeks to restrict the rights of Androulla, by excusing liability for a potential breach on the part of Marios.

Since the clause is written on a document which has been signed by the parties, it forms part of the contract. In other words the exclusion clause has been incorporated into the contract between the parties by signature. It is immaterial that Androulla has not read the clause. The fact that she signed it meant that she was bound by it (*L'Estrange v Graucob* (1934)).

Having decided on the question of incorporation of the disclaimer in the contract between the parties, we need to look at its interpretation. Marios will not be able to rely on the exclusion clause, if Androulla shows that it does not cover the breach in question. The courts apply special rules of interpretation for negligence liability (*Kokkalos v Karayiannis* (1976)). The disclaimer in question is written in general terms and does not contain language expressly exempting the party seeking to rely on it from consequences of his own negligence. However, even if negligence is not expressly exempted, the courts will generally give effect to a clause excluding liability for negligence if the words in their ordinary meaning are wide enough to cover negligence on Marios' part, and there is no other kind of liability that may be covered by the exclusion clause. In this case, the general disclaimer may also cover, for example, theft by third parties, or damage by fire. Therefore the courts will most likely confine the application of the disclaimer to the alternative source of liability, and Androulla will be able to claim damages for her stained dress.

9 According to s.178 of the Companies Law, a company may by ordinary resolution dismiss a director, irrespective of any provisions in its articles of association or any agreement between the company and the director. Therefore, the three-year contract with Eleni will not prohibit Best Toys Ltd from dismissing Eleni from the position of director. Therefore, Julia's shareholding will be sufficient to pass a resolution dismissing Eleni.

However, according to the Termination of Employment Law of 1967, dismissing Eleni due to her being on maternity leave will be unlawful. In addition, the Protection of Motherhood Law L. 100(I)/97 provides that a pregnant woman cannot be dismissed from employment during her pregnancy provided that the woman has informed the employer of her pregnancy by certificate of a registered doctor. Since Eleni is on maternity leave, there has presumably been proper notification to the employer. The Law permits dismissal of a pregnant woman in exceptional circumstances where the pregnant woman is guilty of a serious misdemeanour or conduct which justifies the breach of the employment relationship; or the relevant business has ceased to function; or the duration of the employment contract has expired.

Since the duration of Eleni's employment contract has not expired, Best Toys Ltd will have to prove that Eleni has been guilty of a serious misdemeanour or conduct which justifies the breach of her employment contract. In such a case, Best Toys Ltd will have to duly justify Eleni's dismissal in writing.

If Eleni's dismissal is not proved lawful, then she will be entitled to compensation from her employment under the Termination of Employment Law, since she has been continually employed by Best Toys Ltd for more than 26 weeks and she has obviously not reached retirement age.

**10** STM Ltd is a private company, and thus by its articles of association restricts the transfer of its shares. However, according to Table A, which is adopted by STM Ltd as its articles of association, there is no mention of specific restrictions on the transfer of shares, other than the entitlement of the directors at their absolute discretion and without having to provide justification, to refuse to register any transfer of shares irrespective of whether such shares have been totally paid or not. Therefore, the only way for Stavros to oppose Tina's proposed transfer of her shareholding to Tom is by persuading the board of directors to refuse to register the said transfer.

With regard to the issuing of shares at a premium, this is permitted by the law. According to s.55 of the Companies Law, when a company issues its shares at a premium, that is at a value above nominal value, a sum equal to the aggregate amount or value of the premiums is transferred to a 'share premium account'. The share premium account may be applied by the company, *inter alia*, for writing off the company's preliminary expenses. Therefore, Stavros will again need to persuade the board of directors to implement his wishes.

- 1** 6–10 A thorough answer showing good understanding of the effect and application of EU law in Cyprus. Reference must be made to the fifth amendment of the Constitution.  
0–5 A less complete answer, perhaps lacking in detail.
- 2** 8–10 Thorough explanation of both the meaning and significance of consideration in contractual arrangements.  
5–7 A less complete treatment of both parts of the question.  
0–4 Very unbalanced answer, focusing on only one aspect of the question, or one which shows little understanding of the idea of consideration.
- 3** 8–10 A good treatment of the ways in which partnerships may be dissolved.  
5–7 A sound understanding of the area, although perhaps lacking in detail.  
2–4 Some understanding of the area but lacking in detail.  
0–1 Little or no knowledge of the area.
- 4** 8–10 Detailed explanation of both the rule relating to separate personality and the circumstances in which it may be ignored. Reference must be made to *Salomon v Salomon*.  
5–7 A reasonable treatment of both parts, although lacking in detail.  
0–4 Very unbalanced answer, focusing on only one aspect of the question, or one which shows little understanding of the subject matter of the question.
- 5** 8–10 Answers will show a thorough understanding of the *ultra vires* rule and its effect in Cyprus.  
5–7 A sound understanding of the area, although perhaps lacking in detail.  
0–4 Little understanding of the area.
- 6** 8–10 A good explanation of both a company's borrowing powers and lending powers to its directors.  
5–7 A sound understanding of both a company's borrowing powers and lending powers to its directors, although perhaps lacking in detail.  
0–4 Little understanding of the area.
- 7** 7–10 A complete answer, demonstrating a good understanding of the idea and legal framework relating to corporate governance.  
4–6 An accurate recognition of the issues relating to corporate governance and its legal framework, but perhaps lacking in detail.  
0–3 A weak answer showing little understanding of the concept of corporate governance.
- 8** 8–10 A complete answer, highlighting and dealing with all of the issues presented in the problem scenario.  
5–7 An accurate recognition of the problems inherent in the question, together with an attempt to apply the appropriate legal rules to the situation.  
2–4 An ability to recognise some, although not all, of the key issues and suggest appropriate legal responses to them. A recognition of the area of law but no attempt to apply that law.  
0–1 Very weak answer showing no, or very little, understanding of the question.

- 9** 8–10 A complete answer, highlighting and dealing with all of the issues presented in the problem scenario.
- 5–7 An accurate recognition of the problems inherent in the question, together with an attempt to apply the appropriate legal rules to the situation.
- 2–4 An ability to recognise some, although not all, of the key issues and suggest appropriate legal responses to them. A recognition of the area of law but no attempt to apply that law.
- 0–1 Very weak answer showing no, or very little, understanding of the question.
- 10** 8–10 A good analysis of the scenario with a clear explanation of the law relating to transfer of shares in private companies and issuing shares at a discount.
- 5–7 Some understanding of the situation but perhaps lacking in detail.
- 0–4 Weak answer lacking in knowledge or application.